

EXHIBIT G

In the Matter Of:

NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY

VIDEOTAPED DEPOSITION OF DALE BATCHELOR, M.D.

September 02, 2015



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NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY
VIDEOTAPED DEPOSITION OF DALE BATCHELOR, M.D. on 09/02/2015

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3
4 IN RE: NEW ENGLAND
5 COMPOUNDING PHARMACY,
6 INC. PRODUCTS LIABILITY MDL No. 2419
LITIGATION
7 Master Dkt:
1:13-md-02419-RWZ

8 ~~~~~
9 THIS DOCUMENT RELATES
10 TO:

11 All Actions
12 ~~~~~

13 VIDEOTAPED DEPOSITION OF
14 DALE BATCHELOR, M.D.

15 9:06 a.m.
16 September 2, 2015

17
18 Suite 700, Roundabout Plaza
19 1600 Division Street
20 Nashville, Tennessee

21 Blanche J. Dugas, RPR, CCR No. B-2290
22
23
24
25



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1 Q. It was -- did you consider that to be part
2 of your job with St. Thomas Hospital?
3 A. Yes.
4 Q. Did you regularly attend St. Thomas
5 Outpatient Neurosurgical Center board meetings during
6 the time you served on the board?
7 A. Yes.
8 Q. Did you understand that as a -- did you
9 understand as a board member that the management of
10 STOPNC was vested in the board?
11 A. The board had ultimate responsibility for
12 the operation of that entity.
13 Q. Have you ever seen the operating agreement
14 for STOPNC?
15 A. Yes.
16 Q. Let me hand you what we've marked this as
17 Exhibit 174.
18 MR. CHALOS: Does anybody need a
19 copy?
20 MS. PUIG: Sure. I'll take a copy.
21 Thank you.
22 MR. CHALOS: Sorry, I don't have
23 another one.
24 MS. HAMPTON: That's okay.
25 Q. (By Mr. Chalos) You've seen this document

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1 before, sir?
2 A. Uh-huh (affirmative). Yes.
3 Q. I'll refer you, if I may, to Page 10,
4 Paragraph 3.1. Tell me when you've had a chance to
5 read that.
6 A. Yes.
7 Q. Okay. Does this paragraph accurately state
8 your understanding of the purpose of STOPNC?
9 A. Yes.
10 Q. If you look at the last sentence of that
11 paragraph, it says, "Further, the purpose of the
12 LLC" -- meaning STOPNC -- "shall be to support the
13 institutions sponsored by Ascension and to cooperate
14 with other institutions sponsored by Ascension."
15 Do you see that?
16 A. Yes.
17 Q. What does that mean?
18 A. When I read it, my interpretation, I'm not
19 a lawyer, so I -- if it has a legal nuance, that's
20 beyond me. So it's -- it says to support the
21 institution, that means that it -- I take it not to be
22 in opposition to the general philosophical stance of
23 Ascension or Ascension institutions.
24 Q. What about "to cooperate with other
25 institutions sponsored by Ascension"? What does that

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1 mean?
2 A. Again, not to be at odds with your members
3 of the same entity, meaning Ascension, to be
4 cooperative.
5 Q. If you would flip over to Page 16, I'd like
6 to direct your attention to Paragraph 7.1 which then
7 spills over to Page 17. 7.1, if you wouldn't mind
8 taking a look at that.
9 A. Okay.
10 Okay.
11 Q. This provides -- and I'm reading from the
12 second sentence on Page 17 -- that "The board of
13 governors of STOPNC may delegate such authority and
14 responsibility as it deems to be in the best interest
15 of the LLC to the managers."
16 Do you see that?
17 A. Right.
18 Q. Okay. Did that, in fact, happen? Did the
19 STOPNC board delegate the authority for managing the
20 business and affairs of STOPNC to managers?
21 A. The board delegated the responsibility too
22 for the operations outside the board, yes.
23 Q. To whom did they delegate those
24 responsibilities?
25 A. To the management team of the

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1 neurosurgeons.
2 Q. And that was the Howell Allen Group?
3 A. They were Neurological Surgery at that
4 time, I think.
5 Q. They ultimately became the Howell Allen
6 Group?
7 A. Yes.
8 Q. And they -- that group also appointed a
9 medical director for the clinic; is that right?
10 A. I think that's correct.
11 Q. Do you know who that was?
12 A. Again, if memory serves me correctly, Dr.
13 Everett Howell.
14 Q. Was he ultimately replaced by somebody
15 else?
16 A. I don't know.
17 Q. Do you know who the medical director of
18 STOPNC was in 2012?
19 A. I cannot answer that for sure.
20 Q. Other than attending board meetings for
21 STOPNC, what other actions did you take for STOPNC
22 while you served on the board, if any?
23 A. Probably none.
24 Q. Did you attend all of the STOPNC board
25 meetings while you were on the board for the

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1 organization?

2 A. Not all of them.

3 Q. They would -- the board would typically

4 meet four times a year; is that right?

5 A. They would vary in frequencies, but that

6 sounds about right.

7 Q. And if we assume there were about four

8 meetings a year, how many would you typically attend

9 in a given year?

10 A. Typically most of them, three out of four

11 at least, if not four out of four, but not the

12 absolute all.

13 Q. Did you have any role in approving any

14 policies for STOPNC while you were on the board?

15 A. Policies would be presented by the MEC or

16 whomever to the -- and those would be approved by the

17 board.

18 Q. Do you recall approving any policies

19 regarding pharmaceutical drugs purchased by the clinic

20 for sale and administration to patients?

21 A. No.

22 Q. Did you ever approve such policies?

23 A. No.

24 Q. Did you have any role in connection with

25 approving a formulary for STOPNC?

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1 A. Not that I recall.

2 Q. Have you ever seen a formulary for STOPNC?

3 A. Again, not that I recall.

4 Q. Do you know whether STOPNC had a policy

5 regarding whether it could purchase drugs from

6 compounders?

7 A. No.

8 Q. That wasn't a very good question.

9 Did STOPNC, to your knowledge, have a

10 policy regarding whether it could purchase drugs from

11 compounders?

12 A. Not to my knowledge.

13 Q. Prior to the meningitis outbreak in 2012,

14 do you recall any discussions about purchasing --

15 about STOPNC purchasing drugs from compounders?

16 A. No.

17 Q. Did STOPNC have an equivalent of the PTAC

18 committee that existed at St. Thomas Hospital?

19 A. I don't know.

20 Q. Did you ever serve on a committee like a

21 PTAC committee for STOPNC?

22 A. No.

23 Q. Did you ever serve as a medical director of

24 STOPNC?

25 A. No.

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1 Q. Did you ever serve as the chief medical

2 officer of STOPNC?

3 A. No.

4 Q. Did anyone from STOPNC ever seek your

5 medical judgment on any issue?

6 A. Not to my knowledge.

7 Q. If someone from STOPNC had asked for your

8 medical judgment on an issue, would you have given it?

9 A. Probably.

10 Q. Why do you say probably? Is there a chance

11 you might not have?

12 A. Well, no, it's very simple. My

13 relationship with STOPNC was a board member, not as a

14 medical advisor. But if somebody came to me in the

15 hallway and asked me a question about eyeballs and how

16 they related to neurologic procedures, I probably

17 would opine at that point trying to help him out as a

18 doctor but not as a CMO and not as a board member of

19 STOPNC.

20 Q. Do you know. Well, strike that.

21 Did anyone, to your knowledge, from STOPNC

22 ever seek Marty Kelvas's pharmaceutical advice on any

23 issue?

24 A. Not that I know of.

25 Q. Would Mr. Kelvas have provided his opinion

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1 if asked by someone from STOPNC?

2 MR. GIDEON: I object to the outright

3 speculation.

4 MS. PUIG: Object to form. You can

5 go ahead and answer if you know.

6 THE WITNESS: I have no clue what

7 Marty would do.

8 Q. (By Mr. Chalos) Have you ever talked with

9 Marty Kelvas about the meningitis outbreak in 2012?

10 A. I talked to him probably in September of

11 2012 when all this was swirling about.

12 Q. What did you talk to him about?

13 A. I was getting his opinion on compounding,

14 and this is when the facts were slowly but surely

15 rising to the surface.

16 Q. Okay. What did he say to you?

17 A. Best of my recollection, he said that he

18 did not use compounding labs and he didn't like the

19 concept.

20 Q. Didn't like what concept?

21 A. The use of compounding labs outside the

22 facility.

23 Q. Did he say why?

24 A. I'm sure he did, but I can't remember.

25 Q. Did you say anything else to Mr. Kelvas

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1 that you recall?

2 A. No. It was a very short conversation.

3 Q. Did he say anything about the safety of
4 compounded drugs from outside laboratories?

5 MS. PUIG: Before or after the
6 outbreak, Counsel?

7 MR. CHALOS: During the conversation
8 he's talking about.

9 THE WITNESS: The outbreak was
10 ongoing as we had this very brief
11 discussion. I think he did voice some
12 concern about the safety, but...

13 Q. (By Mr. Chalos) What did he say, as best
14 you can recall?

15 A. I honestly cannot recall.

16 Q. Okay. Where did that conversation -- where
17 did that conversation happen?

18 A. Somewhere within the environments of the
19 hospital.

20 Q. Was anybody else present?

21 A. I really have no recollection.

22 Q. Did you just happen to run into him in the
23 hospital?

24 A. Yeah. At this point we had a lot of
25 activity going on.

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1 Q. Prior to the outbreak, did you have any
2 conversations with Mr. Kelvas about the safety of
3 compounders?

4 A. No.

5 Q. Prior to the outbreak, did you have
6 conversations with anyone about the safety of
7 compounded drugs?

8 A. No.

9 VIDEOGRAPHER: Excuse me, would you
10 mind if we take a break again? I'm so
11 sorry.

12 MR. CHALOS: Sure.

13 VIDEOGRAPHER: We're off the record
14 at 9:51.

15 (A recess was taken.)

16 VIDEOGRAPHER: Okay. We're back on
17 the record at 10:08.

18 Q. (By Mr. Chalos) Did you view, Dr.
19 Batchelor, part of your role as a board member of
20 STOPNC to be looking out for the safety of STOPNC
21 patients?

22 A. As a member of any organization that's
23 healthcare related, you always have to have patient
24 safety in mind. That's the role of whatever you're
25 doing.

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1 Q. Why is that?

2 A. Well, patient safety is ultimately one
3 thing that you're charged to protect as best as
4 possible.

5 Q. And would you agree that an organization
6 should never put money profits over patient safety?

7 MR. GIDEON: Objection to the form.

8 MS. PUIG: Object to form.

9 Q. (By Mr. Chalos) You may answer.

10 A. Profits should not trump safety.

11 Q. That was true for STOPNC as well?

12 A. Yes.

13 MR. GIDEON: Objection to form.

14 THE WITNESS: Yes.

15 Q. (By Mr. Chalos) Did you in your capacity
16 as either a board member of STOPNC or chief medical
17 officer of St. Thomas Hospital provide any
18 credentialing services to STOPNC?

19 A. Did I?

20 Q. Yes, sir.

21 A. I personally didn't provide credentialing
22 services. The STOPNC -- the STOPNC used the services
23 of medical affairs to credential their doctors,
24 medical affairs at the hospital.

25 Q. Okay. So STOPNC used St. Thomas Hospital's

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1 medical affairs office to do credentialing for the
2 STOPNC physicians?

3 A. Right.

4 Q. Do you know what type of credentialing was
5 done by St. Thomas Hospital for STOPNC physicians?

6 A. It was general medical staff credentialing.
7 You did verification of licensure, federal check,
8 compliance and those kind of issues.

9 Q. Are you familiar with the credentialing
10 process?

11 A. Yes.

12 Q. Okay. What would the credentialing process
13 at St. Thomas Hospital -- let's say in 2012, what
14 would that involve?

15 A. Well, you have physicians that would apply
16 for membership to the medical staff. They would
17 complete an application for it, outline their
18 qualifications, their training, their certifications,
19 their references, and all that has to be source
20 verified.

21 So there was a staff that their job was to
22 collect that data, document it, document their
23 licensure with the state and present a file and then
24 the file was voted on, approved or disapproved by the
25 medical executive committee. And once it was